

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

THE ESTATE OF CINDY LOU HILL, by  
and through its personal representative,  
Joseph A. Grube; and CYNTHIA  
METSKER,  
individually,

## Plaintiffs,

VS.

NAPHCARE INC., an Alabama corporation; HANNAH GUBITZ, individually; and SPOKANE COUNTY, a political subdivision of the State of Washington.

## Defendants.

**NO. 2:20-cv-00410-MKD**

**DEFENDANT SPOKANE  
COUNTY'S REPLY  
MEMORANDUM IN SUPPORT OF  
ITS MOTIONS IN LIMINE**

## **NOTE FOR CONSIDERATION:**

**Tuesday, June 28, 2022**

**A. Argument, testimony or comment which invites the jurors to conceptually put themselves in the place of the plaintiff in considering any of the issues -**

Plaintiffs do not oppose an order in limine preventing the plaintiffs from arguing or testifying that the jurors should place themselves in the plaintiffs' position in considering any aspect of this case.

**B. References to Liability Insurance or Indemnification.**

Plaintiffs agree not to offer evidence in violation of Fed. R. Evid. 411 unless the County opens the door to such evidence. The Court should enter an order prohibiting the introduction

**DEFENDANT SPOKANE COUNTY'S REPLY  
MEMORANDUM IN SUPPORT OF ITS  
MOTIONS IN LIMINE – 1  
Cause No.: 2:20-cv-00410-MKD**

*LAW, LYMAN, DANIEL,  
KAMERRER & BOGDANOVICH, P.S.  
ATTORNEYS AT LAW*  
2674 R.W. JOHNSON RD. TUMWATER, WA 98512  
P.O. BOX 11800 OLYMPIA, WASHINGTON 98508-1880  
(360) 754-3480 FAX: (360) 357-3511

1 of evidence that any defendant may have liability insurance that applies to this matter. If  
2 plaintiffs believe, during the trial, that Spokane County has opened the door in some way to the  
3 introduction of such evidence, the matter should be taken up outside the presence of the jury  
4 before such evidence is attempted to be introduced.

5 **C. All non-party witnesses should be excluded from the courtroom during  
6 trial.**

7 Plaintiffs do not oppose this requested Order.

8 **D. Evidence of settlement negotiations.**

9 Plaintiffs do not oppose this requested Order.

10 **E. Relative Financial Condition of the Parties.**

11 Plaintiffs oppose this motion because they claim it is too vague. However, the motion is  
12 specifically addressed to referenced to the financial resources available to the defendant versus  
13 the resources of the plaintiff *in litigating this case*. The scenarios described in plaintiffs'  
14 response are not within the requested order. Plaintiffs do no specifically oppose the motion to  
15 prohibit such reference and the motion should be granted because such evidence is designed to  
16 appeal to the passion or prejudice of the jury and is not relevant. Fed. R. Evid. 402 and 403.

17 **F. Evidence or theories not previously disclosed by plaintiff in discovery or  
18 properly supplemented pursuant to FRCP 26.**

19 Plaintiffs' point is well taken. Spokane County will object at trial.

20 **G. That the defendants have not called to testify as a witness any person  
21 equally available to both parties.**

22 Plaintiffs suggest that there are some circumstances when it is "perfectly fair" to point  
23 out that the other side did not call a witness that was equally available to either side. The fail to  
24 explain what circumstances those might be. Arguing that there has been a failure of proof is  
25

1 one thing. Arguing that a party did not call a particular witness that was equally available to  
2 both parties is another and suggests a nefarious motive that is outside the evidence. The Court  
3 should enter an Order prohibiting such an argument unless it is brought up outside the  
4 presence of the jury first.

5 **H. Arguments and inferences outside the record for "political" effect.**

6 Plaintiffs oppose this motion because they claim it is too vague. They do not suggest  
7 that arguing to the jury that a large verdict will "send a message" to "government" of Spokane  
8 County should be permitted. Nor do they deny that they have made no request for injunctive  
9 relief. There is no proper reason to suggest that the jury make any "statement" to the  
10 government with its verdict. That is the subject of this motion and it is certainly specific  
11 enough for plaintiffs to understand what would violate the Order, if it is granted.

12 Plaintiffs suggest that an objection to an "improper" argument is sufficient. However,  
13 such improper arguments are not susceptible of correction by remedial instruction after the  
14 fact to the jury because it simply highlights the improper argument. Defendants request an  
15 order in limine precluding plaintiffs' counsel from inferring or arguing for a political result not  
16 consonant with the instructions of the Court.

17 **I. Testimony from any witness not properly disclosed pursuant to Civil Rule  
18 26.**

19 Plaintiffs' point is well taken. Spokane County will object at trial if necessary and  
20 appropriate.

21 **J. Post-Incident Actions.**

22 Plaintiffs argue that this motion is too vague. However, the motion requests the  
23 exclusion of post-incident matters, including whether internal reviews occurred or whether

1 policy or practice changes were made as a result of the incident. That is specific enough to craft  
 2 an Order and plaintiffs do not specifically oppose such an Order. It should be granted.  
 3 Plaintiffs argue that they should be allowed to introduce evidence that measures were “not  
 4 taken” by Spokane County after Ms. Hill’s death. However, they fail to explain how such  
 5 evidence or argument would be relevant to the damages claim against Spokane County.  
 6 Plaintiffs should be prohibited from arguing or suggesting that Spokane County took, or failed  
 7 to take, any specific actions (policy changes or internal reviews) following the death of Ms. Hill.

9 **K. Prior or Subsequent Jail Deaths.**

10 Plaintiffs suggest that Spokane County does not have standing to oppose the  
 11 introduction of evidence of other factually unrelated jail deaths, despite the fact that they  
 12 concede it would not be relevant against the County. While NaphCare can object on its own,  
 13 Spokane County also seeks the exclusion of such evidence because, as to Spokane County, such  
 14 evidence would be inadmissible pursuant to Rules 404(b) and 403. *See also, Duran v. City of*  
 15 *Maywood*, 221 F.3d 1127, 1132-1133 (9th Cir. 2000); and *Bibo-Rodriguez*, 922 F.2d 1398,  
 16 1400(9th Cir. 1991.) It would also be irrelevant under Rule 402.

18 **L. The court should require 24 hours notice of witnesses, deposition  
 19 testimony, and exhibits prior to presentation at trial.**

20 Spokane County agrees with plaintiffs’ proposal on witnesses and withdraws its request  
 21 for pre-disclosure of exhibits.

22 **M. Any argument or evidence that the parties have filed motions in limine.**

23 Plaintiffs agree with this motion.

1      **N. Plaintiffs' Exhibit 12.**

2      If the Court permits Exhibit 12 (the Hammond Report) to be admitted, Spokane County  
 3      agrees with plaintiffs suggestion and would ask the Court to instruct the jury that it should only  
 4      be considered for plaintiffs' claims against NaphCare. Nevertheless, Spokane County retains its  
 5      argument that the Hammond Report is hearsay and should be excluded because the exceptions  
 6      argued by plaintiff (not offered for the truth of the matter asserted) do not hold up. If the  
 7      report is not being offered for its truth, then it is not relevant and should be excluded under  
 8      Rules 402 and 403.

10     **O. Plaintiffs' Exhibit 17.**

11     In response to the motion to exclude an animation, Exhibit 17, produced by the plaintiffs  
 12    on May 2, 2022, after the completion of discovery, plaintiffs offer the declaration of Dr. Schubl  
 13    to support its foundation. Dr. Schubl did not prepare the animation and the person who did  
 14    has never been identified. Defendants had no ability to discover such things given the timing  
 15    of the disclosure. Because it was produced after the discovery deadline and unaccompanied by  
 16    any apparent foundational support at the time of its disclosure, it should be excluded as  
 17    untimely. In addition, Dr. Schubl concedes that there are elements of the animation that are  
 18    not supported by the medical examiners report, such as the presence of bacteria in the brain.  
 19    Plaintiffs' exhibit 17 should be excluded.

21     **P. Plaintiffs' Should Not Be Permitted to Call Michael Sparber.**

22     Plaintiffs concede that they have identified two witnesses to testify on the same topics.  
 23    One is Michael Sparber, the former director of the Jail, who was not personally involved in any  
 24    way with the care or custody of Ms. Hill. Plaintiffs concede that Mr. Sparber cannot offer any  
 25    relevant testimony against Spokane County. Plaintiffs do not dispute that the testimony they  
 26

1 claim Mr. Sparber can offer can also be offered by Lt. Don Hooper, who is also listed by  
2 plaintiffs as a witness. Plaintiffs should not be allowed to call Mr. Sparber and Lt. Hooper to  
3 offer duplicative testimony. Because Lt. Hooper is available, Mr. Sparber should be released  
4 from the trial subpoena.

5 DATED this 10<sup>th</sup> day of June, 2022.  
6

7 LAW, LYMAN, DANIEL,  
8 KAMERRER & BOGDANOVICH, P.S.  
9

/s/ *John E. Justice*

10 John E. Justice, WSBA № 23042  
11 Attorney for Defendant Spokane County  
12 P.O. Box 11880, Olympia, WA 98508  
13 Phone: (360) 754-3480 Fax: 360-357-3511  
14 Email: [jjustice@lldkb.com](mailto:jjustice@lldkb.com)

**DEFENDANT SPOKANE COUNTY'S REPLY  
MEMORANDUM IN SUPPORT OF ITS  
MOTIONS IN LIMINE – 6  
Cause No.: 2:20-cv-00410-MKD**

*LAW, LYMAN, DANIEL,  
KAMERRER & BOGDANOVICH, P.S.*  
ATTORNEYS AT LAW  
2674 R.W. JOHNSON RD. TUMWATER, WA 98512  
P.O. BOX 11880 OLYMPIA, WASHINGTON 98508-1880  
(360) 754-3480 FAX: (360) 357-3511

## **CERTIFICATE OF FILING & SERVICE**

I certify under penalty of perjury under the laws of the United States of America and the State of Washington that on the date specified below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which constitutes service on the following under LCivR 5(b):

***Counsel for Plaintiffs***

Erik J. Heipt, WSBA #28113  
Edwin S. Budge, WSBA #24182  
Hank Balson, WSBA #29250  
Budge & Heipt PLLC  
808 East Roy Street  
Seattle, WA 98102  
[erik@budgeandheipt.com](mailto:erik@budgeandheipt.com)  
[ed@budgeandheipt.com](mailto:ed@budgeandheipt.com)  
[hank@budgeandheipt.com](mailto:hank@budgeandheipt.com)

***Counsel for Defendant Naphcare & Gubitz***

Ketia B. Wick, WSBA #27219  
Erin E. Ehlert, WSBA # 26340  
Fain Anderson VanDerhoef Rosendahl O'Halloran Spillane  
701 Fifth Avenue, Suite 4750  
Seattle, WA 98104  
[ketia@favros.com](mailto:ketia@favros.com)  
[erine@favros.com](mailto:erine@favros.com)

DATED this 10<sup>th</sup> day of June, 2022, at Tumwater, WA.

*/s/ John E. Justice*

---

**John E. Justice**

**DEFENDANT SPOKANE COUNTY'S REPLY  
MEMORANDUM IN SUPPORT OF ITS  
MOTIONS IN LIMINE – 7  
Cause No.: 2:20-cv-00410-MKD**

*LAW, LYMAN, DANIEL,  
KAMERRER & BOGDANOVICH, P.S.*  
ATTORNEYS AT LAW  
2674 R.W. JOHNSON RD. TUMWATER, WA 98512  
P.O. BOX 11880 OLYMPIA, WASHINGTON 98508-1880  
(360) 754-3480 FAX: (360) 357-3511